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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,100	09/26/2001	Ikuo Ozawa	4041K-000036	3018

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

C/N

**Office Action Summary**

Application No.

09/964,100

Applicant(s)

Ozawa et al.

Examiner

Ljiljana V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Nov 18, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Sep 26, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 9 6) ☐ Other:

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## DETAILED ACTION

### *Response to Amendment*

1. This Office action is in response to the amendment and arguments filed on November 18, 2002.
2. Claims 1 through 7 (as amended) remain in the application.
3. Upon reconsideration in view of the amendment and arguments filed on November 18, 2002, the finality of the previous Office action is hereby being withdrawn. Please note, however, that the instant Office action is being made final for the reasons set forth below.

### *Response to Arguments*

4. Applicant's arguments filed on November 18, 2002 with regard to the prior art rejections of claims 1 through 7 as being anticipated under 35 U.S.C. 102(b) by *Tepas et al.* and by *Bolton et al.* have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed on November 18, 2002 with regard to the prior art rejection of claims 1 through 6 as being obvious under 35 U.S.C. 103(a) in view of *Holka* have been fully considered but they are not persuasive. First of all, applicant's arguments do not appear to present anything which is unexpected and unknown in the art and further appear to prove the examiner's position that the rearrangement of the fan upstream or downstream of the radiator and the heat exchanger is a matter of design choice. Second of all, a lay person's arguments or conclusory statements unsupported by factual evidence are insufficient to establish unexpected results. In re

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Lindner, 173 USPQ 356 (CCPA 1972). Of course, as long as there is a question of obviousness, applicants may submit a Rule 312 affidavit which attempts to prove new and unexpected results.

***Drawings***

5. Upon reconsideration in view of the applicant's arguments, the examiner hereby withdraws the objection to the drawings as cited in the previous Office action.

***Specification***

6. Receipt and entry of the amended abstract is hereby acknowledged.

***Claim Rejections - 35 U.S.C. § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3, 4, 6, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by *Susa et al.*

*Susa et al.* [especially Figure 13] discloses a front end structure or assembly essentially as claimed, including: a front end panel or bonnet cover 308 including fan unit 305 and a fan shroud 307; a radiator 100; a heat exchanger or condenser 200; and, a structural member comprising tubular portion 2 and wall 26 along with various other associated elements as shown in Figure 13, which structural member, as joined with the radiator 100 and the heat exchanger or condenser 200 forms a "duct structural member" as claimed. The radiator 100 and the heat

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exchanger or condenser 200 are arranged in series with respect to the air flow therethrough, and are fixed to the front end panel or bonnet cover 308. The fan unit 305 is arranged upstream of the radiator 100 and of the heat exchanger or condenser 200.

The reference thus reads on the claims.

***Claim Rejections - 35 U.S.C. § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Susa et al.*

As discussed in greater detail above, *Susa et al.* discloses the front end structure essentially as claimed, but does not specify that the front end panel is integrally formed from a resin. Nevertheless, Official Notice is hereby taken that it is known in the art of car parts manufacturing and design to make front end structures integral from resin. Furthermore, making an assembly integral or having it consist of diverse elements, as well as choosing the material from which to make the same, generally depends more on design choice and manufacturing expediency than on inventiveness. See *In re Lockhart*, 90 USPQ 214 (CCPA 1951).

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It would thus have been obvious to one skilled in the art at the time of invention to modify the front end structure of *Susa et al.* by making the front end structure integrally formed from a resin in order to, for example, both reduce assembly time and avoid rust.

11. Alternately, claims 1 through 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Holka*.

*Holka* discloses the front end structure of an automotive vehicle essentially as claimed, including: an integrally formed vehicle front end panel 10 fabricated from a synthetic polymeric material (i.e., a resinous material); vehicle front end parts including a radiator and another heat exchanger (such as a condenser) arranged in series to form a heat exchanger assembly 14 [column 2, lines 30-32], the heat exchanger assembly 14 being part of and fixed to the front end panel 10; a duct structure 24 and 26 sealably connected to the side edges 22 of the heat exchanger assembly 14 and thus enclosing a circumference of the radiator and of the other heat exchanger forming the heat exchanger assembly 14 [column 2, lines 41-44], the front face 18 of the heat exchanger assembly 14 corresponding to the air inlet opening for introducing air into the engine compartment as claimed [column 2, lines 32-35]; and, fan units 34 or 44 for drawing air through the heat exchanger assembly 14.

Although *Holka* discloses the fan units 34 or 44 as being downstream of the heat exchanger assembly 14 and not upstream of the latter as claimed, it is hereby noted that, absent the establishment of unexpected results, there is no invention in shifting the location of the fan units 34 or 44 relative to the heat exchanger assembly 14 since the operation of the front end

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structure 10 would not be modified by the shift; whether the fan units 34 or 44 are located upstream or downstream of the heat exchanger assembly 14, the fan units serve 34 or 44 serve to draw air through the radiator and other heat exchanger in the heat exchanger assembly 14. See In re Japikse, 86 USPQ 70 (CCPA 1950).

It would thus have been obvious to one skilled in the art at the time of invention to modify the vehicular front end structure 10 of *Holka* by shifting the location of fan units 34 or 44 to a location upstream of the heat exchanger assembly 14 in order to, for example, reduce the width of the front end structure 10 or to meet other vehicular design constraints.

### ***Conclusion***

12. The following additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. *Toshiba Corp.* and *Toyo Radiator Co. Ltd.* each shows a vehicular fan/heat exchanger combination wherein the fan is upstream of the heat exchanger.

13. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on August 2, 2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(I). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

December 2, 2002



LJILJANA V. CIRIC  
PRIMARY EXAMINER  
ART UNIT 3743